

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 300 Quarropas Street, Room 248

13 White Plains, NY 10601

14

15 February 14, 2024

16 10:06 AM

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21 B E F O R E :

22 HON SEAN LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ART

1 HEARING re Omnibus Hearing

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3 HEARING re Doc. # 1296 Notice of Agenda

4

5 HEARING re Doc. #1227 (Sale) Motion to Sell Property Free

6 and Clear of Liens Under Section 363(f) / Debtor's Motion

7 Seeking Entry of an Order Authorizing, But Not Directing,

8 (I) the Sale of Trust Assets and (II) Granting Related

9 Relief.

10

11 HEARING re Doc. #1241 (Sale) Order Shortening the Notice

12 Period for the Debtor's Motion Seeking Entry of an Order

13 Authorizing, But Not Directing, (I) the Sale of Trust Assets

14 and (II) Granting Related Relief

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25 Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

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23 BENJAMIN S. BELLER

24 JEFFREY BERNSTEIN

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15 TIM WOLFE

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Sean Lane
3 in the United States Bankruptcy Court for the Southern
4 District of New York, and we're here for a ten o'clock
5 hearing on Genesis Global Holdco., LLC., a jointly
6 administered Chapter 11 case. We'll start as we always do
7 by getting appearances, so let me start with the Debtors.

8 MR. ONEAL: Good morning, Your Honor. Sean
9 O'Neal, Cleary Gottlieb Steen and Hamilton on behalf of the
10 Debtors. I have with me today Mr. Luke Barefoot and Mr.
11 Andrew Weaver.

12 THE COURT: All right, good morning.

13 And let me find out who's here on behalf of the
14 official committee.

15 MR. SHORE: Good morning, Your Honor. Chris Shore
16 from White and Case on behalf the committee. I think I have
17 Phil Abelson and Colin West on with me today as well.

18 THE COURT: Good morning.

19 On behalf of Digital Currency Group?

20 MR. SAFERSTEIN: Good morning, Your Honor.
21 Jeffrey Saferstein from Weil Gotshal and Manges on behalf of
22 DCG. I believe I'm joined by Jessica Liou and Furqaan
23 Siddiqui.

24 THE COURT: Good morning.

25 On behalf of Grayscale Investments?

1 MR. KAMINETZKY: Good morning, Your Honor.

2 Benjamin Kaminetzky of Davis Polk on behalf of Grayscale.

3 THE COURT: Good morning.

4 On behalf of the ad hoc group?

5 MR. ROSEN: Good morning, Your Honor. Brian

6 Rosen, Peter Doyle Proskauer Rose on behalf of the ad hoc

7 group, Genesis Lenders.

8 THE COURT: Good morning. On behalf of Gemini?

9 MR. FRELINGHUYSEN: Good morning, Your Honor.

10 Anson Frelinghuysen, Hughes Hubbard and Reed, on behalf of

11 Gemini Trust Company. I'm joined by my colleague, Elizabeth

12 Beitler.

13 THE COURT: Good morning.

14 And at this point, there are quite a few other

15 appearances on the Zoom appearance sheet. Also, I'll just

16 open it up to anybody else who feels they need to make an

17 appearance on the record this morning.

18 MR. BARRETT: Good morning, Your Honor. Luke

19 Barrett with McDermott Will and Emery on behalf of the

20 Genesis Crypto Creditors ad hoc group.

21 THE COURT: All right, good morning.

22 Anyone else?

23 MR. MEDINA: Good morning, Your Honor. Eric

24 Medina on behalf of BAO Family Holdings.

25 THE COURT: Good morning.

1 Anyone else?

2 All right, with that, I'll turn it over to Mr.
3 O'Neal to set the stage for this morning. I do have in
4 front of me the amended agenda. And with that, Mr. O'Neal?

5 MR. ONEAL: Certainly, thank you, Your Honor.
6 There is only one matter on today's hearing, and that is
7 what we call the trust asset sale motion.

8 On February 2nd, we filed this motion, and it
9 seeks authority to transfer or redeem certain shares that we
10 have in three trusts that are managed by Grayscale, which is
11 an affiliate of DCG. Those three trusts are known as GBDC,
12 ETHE, and ETH Classic Trust. Just to give you an idea of
13 what the value that we're talking about, the bulk of the
14 value is in connection with the GBTC shares, and the value
15 of those shares on a market basis, as of February 13th, is
16 approximately \$1.6 billion today, or yesterday, I should
17 say.

18 And Your Honor, the motion also covers the GBTC
19 shares, sometimes the Tranche I shares, that are currently
20 held by Gemini. We included those shares in this motion,
21 even though they're held by Gemini, because there is a
22 dispute, as you know, Your Honor, about the Tranche I
23 shares, as to the ownership of those shares. We don't need
24 to resolve that dispute today, thankfully. Gemini supports
25 this motion and was involved in reviewing and commenting on

1 it today.

2 This motion is also supported by the ad hoc group
3 and the creditors committee. And in addition, in response
4 to the SEC comments, we added language that the Debtors will
5 comply with all applicable securities laws, thereby
6 resolving any objection that the SEC may have had.

7 There are -- there were two limited objections
8 that were filed. One was by DCG and another by its
9 affiliate, Grayscale. As you saw last night, or maybe you
10 didn't, but perhaps you saw it this morning, we filed a
11 revised proposed order at about 8 p.m. That's Docket Number
12 1307, and we disclosed at that point that we had actually
13 resolved the objection by Grayscale. So at this point, we
14 have only one objection, and that is the objection of DCG,
15 which as of last night, they were proceeding with today.

16 Your Honor, I'd like to begin by asking the Court
17 to admit into evidence as direct testimony the declarations
18 of Michael DiYanni of Moelis and Company, which can be found
19 at Exhibit A to the motion, Docket 1227, and then also
20 Docket Number 1293 for the supplemental declaration.

21 THE COURT: All right, any objection to the Court
22 receiving those declarations in support of the motion today?

23 All right, hearing no objections, those
24 declarations are received as evidence.

25 (Debtor's Exhibit A was received in evidence.)

1 MR. ONEAL: Thank you, Your Honor. And I'll just
2 say a few words, Your Honor. This is not a very complicated
3 motion. We need to redeem or transfer these shares or cause
4 the redemption or transfer of these shares. With respect to
5 GBTC, our goal is to work with an authorized participant to
6 redeem the shares, effectively converting GBTC into BTC for
7 cash. And we don't need GBTC because we don't have GBTC
8 lenders. Right? Nobody lent us GBTC, but we do have BTC
9 lenders, and we do have US dollar lenders, so we need to
10 convert the GBTC to GBT -- to -- sorry, BTC or US dollars.

11 We, like other holders of GBTC, have been waiting
12 for the GBTC conversion to an ETF. That occurred on January
13 10th, as you saw, from Mr. DiYanni's declaration. And we've
14 been waiting, because that narrowed the discount. The
15 shares have become more valuable with the conversion to an
16 ETF, and so now, we would like to have the flexibility to
17 effectively convert those GBTC shares into consideration
18 that we would pay to our Creditors.

19 With respect to the ETHE and the ETH Classic
20 shares, we may seek to transfer them. We may transfer them
21 at some point in time, but we cannot redeem them. Those
22 trusts have not been converted to ETFs. We do want to be in
23 position, however, to maximize value here. And in
24 consultation with brokers and other advisors, we'd like to
25 have the authority to engage in opportunistic transfers.

1 As mentioned, there's only one outstanding
2 objection. That's the objection of DCG. They make
3 basically four points. First, DCG asked for an adjournment
4 of the motion until after Your Honor makes a determination
5 on confirmation. Second, DCG said that we should be
6 required to hire a broker and to use authorized
7 participants. Third, DCG said that they should have
8 consultation rights with respect to any sales or transfers
9 or redemptions. And then, finally, DCG suggested that we
10 might not be seeking to maximize value.

11 I'll turn to each one of those points, but what's
12 interesting is what DCG didn't say in its objection, or at
13 least I didn't see it, and if I missed it, I apologize,
14 didn't say that DCG has an economic interest here. They
15 have an economic interest in delaying or preventing the
16 transfer redemption of these shares, as noted in Mr.
17 DiYanni's declaration. An affiliate of DCG, that is
18 Grayscale, receives more than \$2 million a month in
19 management fees, attributable to the trust shares that are
20 currently held by the Debtors.

21 Notably, as we noted in both the DiYanni
22 declaration and our reply, this GBTC management fee is about
23 1.5 percent of the net asset value of the trust, which is
24 significantly higher than the .30 percent that most asset
25 managers charge for comparable trust. These management fees

1 really diminish the value of the assets in the hands of the
2 Debtors, and that is part of the reason that we would like
3 to redeem or transfer these shares. And Your Honor, we are
4 not alone. There have been over 170 million shares that
5 have been redeemed since the ETF conversion on January 10th,
6 as Mr. DiYanni noted in his declaration.

7 Turning now to the substance of the objections,
8 with respect to the request to adjourn, I think Your Honor
9 has already denied that request at the status conference on
10 Friday when we scheduled this hearing. With respect to the
11 request that we be required to use a broker and authorize
12 participants, we had always intended to do that. That's
13 what you do. That's how you do this. This is not our first
14 rodeo. We know how to do these kinds of transactions. And
15 so as you'll see, though, in the order, we modified it to
16 make it very clear in both, I think it's Paragraph 2E and
17 Paragraph 2A. We have noted that we will be retaining a
18 broker and an authorized participant.

19 And finally, with respect to DCG's request for
20 consultation rights, we respectfully decline that request.
21 We already have a lot of cooks in the kitchen here, aside
22 from the Debtor's professionals and the Debtor's management,
23 who know this business well, we have authorized
24 participants, liquidity providers, the broker, the
25 Creditor's committee, and the ad hoc group advisors. Having

1 another party with consultation rights could drag out the
2 process, but perhaps more importantly, DCG is simply
3 conflicted here.

4 DCG is trying to generate through its affiliate \$2
5 million in monthly management fees. And we also have to
6 just take a step back and realize that DCG is without
7 question our largest borrower. DCG owes us \$1.1 billion,
8 actually, at least \$1.1 billion. There's more that they owe
9 us on top of that. That puts them in a conflicted
10 situation. It's the very reason that we set up a special
11 committee. There is nothing that the Debtors can do that do
12 not impact the \$1.1 billion that DCG owes us, and so Your
13 Honor, we really think that giving them consultation rights
14 would give rise to tremendous conflicts with respect to this
15 matter.

16 And with respect -- I guess I should just respond,
17 though it feels somewhat unnecessary, to the suggestion that
18 the Debtors may not be focused on maximizing value. That's
19 just wrong. That's what we do every day. The Debtors have
20 been singularly focused on maximizing value for the estates
21 ever since we've been involved in this situation. And in
22 fact, there's even a provision in the order, requiring both
23 the Debtors and Gemini on a good-faith basis to use
24 reasonable best efforts to maximize the market price of any
25 of the trust assets for Tranche I GBTC shares. And you'll

1 see that, Your Honor, in Paragraph 2C of the order. It's in
2 the order. We're going to do it anyway, but it's in the
3 order.

4 So Your Honor, I think that's all we have, and we
5 would ask that Your Honor overrule the DCG objection and
6 enter in the order as amended and proposed in last night's
7 file.

8 THE COURT: All right, thank you very much. In
9 terms of orderly business, I think it makes sense to hear
10 from any parties who want to speak in support of the motion
11 first, and then I'll hear from any parties that wish to
12 oppose it. So let me start, then, with the committee.

13 MR. SHORE: Thank you, Your Honor. Again, Chris
14 Shore from White and Case on behalf of the committee. I'll
15 be extremely brief. The committee fully supports the
16 Debtor's motion, in particular, its efforts to derisk the
17 estate. As we come up towards confirmation, there only
18 appears to be one party who is interested in adding more
19 risk to the estate, and that's DCG, and we'd ask that Your
20 Honor overrule their objection and allow the Debtors to go
21 forward and monetize these assets.

22 THE COURT: All right, thank you very much.

23 Any other parties that wish to be heard in
24 support? I see the ad hoc group on. Let me turn to them.

25 Oh, you're on mute, counsel. It's the joys of

1 technology.

2 All right, so I'm going to circle through some
3 other folks as you work through those issues. All good.

4 Anyone else who wishes to be heard in favor of the
5 motion?

6 MR. FRELINGHUYSEN: I, Your Honor, the -- Anson
7 Frelinghuysen from Hughes Hubbard for Gemini Trust Company.
8 I can understand Mr. Rosen's hand signals. He's saying he
9 supports the motion, and in the meantime, we can move on to
10 me.

11 I think, from Gemini's perspective, we support
12 this motion. It's a very important asset of the -- of
13 Gemini's or the estates, and we worked very carefully with
14 the Debtors to make sure that there was no -- nothing wrong
15 with either side's position. We could move forward with our
16 litigation on that matter without impacting the need to move
17 ahead with this relief, which is to, as Mr. Shore said,
18 derisk and get ready for the eventual confirmation that's
19 coming up, a highly important step in this bankruptcy, and
20 we urge the Court to rule in favor of the Debtors.

21 THE COURT: All right, thank you very much,
22 particularly for your interpreter skills on the hand
23 gestures.

24 Anyone else who wishes to be heard in support?

25 All right, with that, I'll turn to DCG.

1 MR. SAFERSTEIN: Good morning, again, Your Honor.
2 Jeffrey Saferstein from Weil Gotschal and Manges on behalf
3 of DCG. Your Honor, we're not necessarily opposed to a sale
4 here, but if they're going to go forward with sales, we
5 obviously want to make sure it's done right and that it
6 maximizes value. We attempted to settle our objection by
7 inclusion of a couple of things in the order, but the
8 Debtors were unwilling to do that, so I'll go through that.

9 But again, the Debtors have held these shares
10 since November of 2022. And now all of a sudden, it's an
11 emergency done on short notice, and their only justification
12 to sell is that it's in anticipation of a confirmed Chapter
13 11 plan here, but that's not a certainty. And as Your Honor
14 knows, we're objecting to the plan and don't believe that
15 it's confirmable. So we believe that the sales should await
16 a confirmation ruling here, and it's only a couple of weeks.
17 We have a confirmation hearing scheduled for the 26th now,
18 so again, we think that the sales themselves should wait.

19 The Debtor can hire a broker. The Debtor can
20 prepare itself, but to the extent that the Court does not
21 confirm the plan, it may not be necessary to sell these
22 shares or sell all of them, or certainly not all -- some of
23 them or all of them. So again, we would ask that the sales
24 themselves await that.

25 And additionally, there's an important point that

1 has not been raised, which is, because of the rise in crypto
2 prices, there will likely be significant taxes that will be
3 incurred in connection with the sales or redemptions. And
4 these taxable gains will be triggered irrevocably once the
5 shares are transferred or sold. And so again, for that
6 reason, we don't see why the Debtor can't wait a couple of
7 weeks to sell before that happens. And that's, again,
8 irrevocable. And those taxes will be incurred. So again,
9 we think that if they're going to sell it, they should --
10 that should await a confirmation ruling for those reasons.

11 Now, a lot has been said about that this is a
12 delay tactic on our part for the fees. And I want to
13 address that, because it's, from our perspective, very
14 disingenuous. First of all, the Debtors have held these
15 assets, again, since November of 2022. And again, their
16 only justification is anticipation of a plan. So they've
17 been paying these fees all along, and now, all of a sudden,
18 it's become a huge issue for them. So again, I think that's
19 pretty disingenuous, but I think more importantly, the fees
20 are paid to Grayscale, not to DCG. And so they kind of
21 blend us together in their reply. I think most of the reply
22 actually relates to the fees, but the fees do not go to DCG.
23 They go to Grayscale.

24 Now, just to be completely upfront with Your
25 Honor, because I know Mr. O'Neal will raise it, we do get a

1 dividend out of Grayscale, and but that is completely in
2 Grayscale's discretion about the dividend we get, so again,
3 I think the fee is a red herring here. It's -- it shouldn't
4 be the focus of this. This is not a delay tactic. We want
5 to make sure that value is maximized and that this is done
6 right.

7 If Your Honor is inclined to approve the sale,
8 we'd ask for essentially three things; one, we wanted a
9 broker hired. It was uncertain in the order whether or not
10 they were. And I appreciate that Mr. O'Neal has now agreed
11 to do that and took our objection into consideration by
12 agreeing to require a broker here, so again, I think that
13 resolves that issue. Second, and Mr. O'Neal addressed this,
14 which is, we'd like to be consulted just like the UCC and
15 the ad hoc group. There's no reason we shouldn't be
16 involved. Depending on the outcome of confirmation here, we
17 may have a real interest in the sales and the value here.

18 We are the probably the -- DCG is the most
19 knowledgeable party with respect to these assets that has a
20 stake here in the case. So we don't understand why we
21 wouldn't be consulted. We're not asking for consent rights,
22 but just consultation rights. And I think Mr. O'Neal talked
23 about conflicts and the fact that we owe \$1.1 billion.
24 First of all, \$1.1 billion is owed in about eight years. We
25 fully intend to honor our obligations under the \$1.1 billion

1 obligation. I don't see a conflict here.

2 Again, we're not asking for any kind of consent
3 rights. We think we should be consulted. We are the most
4 knowledgeable party here, and I don't know why they wouldn't
5 want to consult us to maximize value. So again, we would
6 ask for consultation rights with respect to the sales here.
7 We're talking about, with respect to the Tranche I, a
8 billion six of value. You put it all together, it's
9 significantly more. So again, we'd like consultation
10 rights.

11 And then, last, was -- is really the tax point.
12 To the extent that there are sales, we'd like it to be clear
13 in the order that any taxes that are incurred are the
14 Debtor's responsibility and that there are administrative
15 expenses. I don't think there should be any controversy
16 with respect to that, but I think we want that to be clear.
17 We are part of a consolidated tax group, and if the Debtor's
18 going to sell this and incur --

19 THE COURT: Well, wouldn't that, counsel, that --
20 I'm going to stay away from that, and the taxes are owed for
21 whoever owes the taxes. I'm not the taxing authority. I'm
22 not the IRS. I -- and frankly, we spent not much time, if
23 any, on the -- on tax issues in this case. Every case is
24 different. Sometimes you spend a lot of time. Sometimes
25 you spend no time. And I -- again, whoever owes the taxes

1 owes the taxes. I don't know that this order, one line in
2 this order, is the place to scale that mountain.

3 MR. ONEAL: Correct.

4 MR. SAFERSTEIN: Your Honor, that's fine. I just
5 wanted to be clear that it's our position that, obviously,
6 if the Debtors incur this tax liability, it should be
7 theirs, not ours. Again, we, for a lot of reasons --

8 THE COURT: I think if you want to reserve your
9 rights, I think it's entirely appropriate to say nothing in
10 this order affects the -- who is owed the tax liability,
11 which is an issue for another day, and everybody reserves
12 their rights. I'm fine with that.

13 MR. SAFERSTEIN: Okay, Your Honor. That's fine
14 with us, Your honor. I think we just wanted to be clear on
15 that point. And again, these taxes will be triggered, and
16 the justification is, for these sales, as an anticipation of
17 a plan, and if the plan doesn't go forward, there may not be
18 a need to sell these shares. Maybe they'll want to do
19 something different with them, so --

20 THE COURT: Well, isn't that -- isn't that always
21 true, right, if we do that, then we're not -- the estate
22 isn't getting itself ready ever until the confirmation order
23 is actually -- the ink is ready to be spilled on the
24 signature line, and so -- and it can't be given all the
25 steps that need to be taken, which were the sort of -- one

1 of the issues you raised and one of the issues, sort of,
2 that's raised in a more exploded view in the Grayscale
3 objection that was resolved, that there are steps to take,
4 and there's also a concern about having to sell everything
5 at once, and the effect on share prices and other things, so
6 I can't see that that alternative is a better alternative.

7 MR. SAFERSTEIN: Well, I think we're looking for
8 two weeks. I don't think we're looking for more. The
9 confirmation's on the 26th, so they could have filed this
10 motion a month ago. They didn't. Now we're on the eve of
11 confirmation, and if the plan is not confirmed, then there
12 may be -- things may happen that may be irrevocable, such as
13 the taxes, which could be -- which could take
14 (indiscernible) --

15 THE COURT: But they're taxes on gain. Right? I
16 mean, they're not taxes that are going to be avoidable if
17 they're sold for a gain at a later time. I mean, they're
18 whatever taxes flow from the eventual sale, and so listen, I
19 will concede. And you probably can get ten out of ten
20 judges on your side in terms of the desire to stay away from
21 motions on short notice. We -- I get that, but we are where
22 we are. And so the sale is being teed up, and confirmation
23 is teed up shortly, and so it doesn't -- again, how does
24 your objection square with the business judgment rule, which
25 says that the Debtors are saying, well, we think this is the

1 way to maximize value and to protect ourselves against risk,
2 and in this case, they have the Creditors whose ox would be
3 gored, lined up on their side, singing from the same hymnal.
4 So how does your objection comport with the business
5 judgment rule in that circumstance?

6 MR. SAFERSTEIN: Well, Your Honor, I think -- I'll
7 make one last point on this to answer that question and the
8 one you asked before about eventual sales. One way to
9 proceed, if the plan is not confirmed, is that the GBTC
10 could be given in kind and therefore not trigger taxes. So
11 there is an alternative to it.

12 THE COURT: Well, but that's not any objection. I
13 mean, that's a new argument.

14 MR. SAFERSTEIN: Yes.

15 THE COURT: So I'm not here to entertain arguments
16 of that sort, which are substantive and would require a
17 detailed response. And that also deals with what the plan
18 should do or not do, which is also what we're not here today
19 for, and again, there's plenty of conversations to be had on
20 that. Anything else?

21 MR. SAFERSTEIN: No, Your Honor. I actually think
22 it's in our objection, but I don't need to go on about it.
23 It relates to the fact that we think that the sales should
24 be delayed, because there are alternatives, and the fact
25 that the plan may not be confirmed, but no, I think that's

1 it, Your Honor. I --

2 THE COURT: Well, I understand your point that it
3 should be delayed.

4 MR. SAFERSTEIN: Yeah.

5 THE COURT: I didn't understand your point to be
6 something as specific as what you just said, which is that
7 essentially distribution should be handled a different way.
8 That I don't see, unless I'm missing something, and if I'm
9 missing something, please feel free to point it out.

10 MR. SAFERSTEIN: No, it's just an offshoot, Your
11 Honor, of the argument that it should be delayed.

12 THE COURT: Haha.

13 MR. SAFERSTEIN: But the plan may not be
14 confirmed, but (indiscernible) --

15 THE COURT: You say "offshoot," I think it's
16 pretty --

17 MR. SAFERSTEIN: -- (indiscernible) --

18 THE COURT: -- it's pretty distinct in that, in
19 terms of making that kind of objection as opposed to simply
20 delay the sale, but it is what it is, so I think --

21 MR. SAFERSTEIN: Your Honor, I -- yeah. I don't
22 need -- we don't need to debate the point. I take your
23 point on that. So look, obviously, it appears that your
24 Honor is going to approve the sale. We would ask again for
25 consultation rights. We don't see why the Debtor wouldn't

1 give us that. We -- we're here to maximize value for
2 everybody. There's no delay tactic --

3 THE COURT: Well, let's talk about that. What I -
4 - I haven't seen anything about the process that's laid out
5 here that gives rise to concern that people don't know what
6 they're doing or have a plan to do this in a way that would
7 maximize value. And in fact, everybody on this -- at this
8 hearing has an interest in maximizing value, so I -- that
9 I'm struggling with on that point. There are a lot of cooks
10 in the kitchen. Some of them are statutorily invited into
11 the kitchen, such as the committee, and so that's my
12 concern, is that sometimes more is not necessarily more on
13 something like this.

14 Again, we already have a bunch of people rowing in
15 that direction who were paying attention to this issue, so I
16 just -- I'm struggling with understanding what it is that
17 would be gained by -- particularly by giving your client
18 consultation rights, given that you say your client's not
19 conflicted, but your client certainly sits in a different
20 posture than the Creditors represented by the Creditors
21 committee or even the ad hoc groups.

22 They -- your client has other relationships and
23 things going on and certainly hopes to get a recovery as an
24 equity holder, but it does have other things going on that
25 make it in a different position, where understanding that

1 can get a little bit cloudy. So what's your view on that in
2 terms of the need for your client to have consultation
3 rights?

4 MR. SAFERSTEIN: Well, first of all, it's
5 consultation, not consent rights, just to be clear. And
6 two, nobody knows this asset better than my client. My
7 client invented the asset. And so, the fact that -- you
8 know, how they sell it in, for instance, how much you sell
9 at a time, how much you redeem at a time, all has an impact
10 on the value here. And --

11 THE COURT: I understand that, but that -- I mean,
12 I get that. It's obvious enough that as someone who's not a
13 cryptocurrency expert, I get it, and I'm, just again, I
14 haven't read anything that tells me that the folks involved
15 don't get it and that they don't have a process, that they
16 don't have an understanding of what needs to be done. And
17 certainly, it's kind of a circumstance where I think
18 everyone would expect, if there was concerns about that, the
19 Creditor committee would be screaming from the highest
20 mountain top about that, as they should, given their
21 statutory position.

22 So I guess I understand, and I'm not trying to in
23 any way disrespect your client's expertise, but I'm just --
24 this doesn't seem, from a -- when you reduce it down to what
25 it is, which is sell the assets in a way that maximizes the

1 value, and there's a market for that, and there's a process
2 for that, we do this all the time in bankruptcy. I know
3 this is -- there's some unique assets here, but I get it.

4 And again, I'm not hearing anything that makes
5 your client's participation crucial to maximizing the value,
6 particularly given that its own situation here is not as
7 straightforward as that of the Creditors who are very
8 involved in the process. But again, that may not be a
9 question to answer. It may just be a speech on my part.
10 I'll leave the last word with you, Mr. Saferstein.

11 MR. SAFERSTEIN: That's fine, Your Honor. Look, I
12 think the Debtor -- if the Debtor's plan with their brokers
13 and others involved maximizes value, we'll have nothing to
14 say. We will agree with it. All we want to do is see value
15 maximized here. Mr. O'Neal talked about having flexibility
16 with respect to the sales, because it's not so simple. It's
17 not so straightforward. You have 35 million shares that all
18 of a sudden will become available on the market, so how you
19 do it is critical.

20 And again, if their experts have the right plan
21 and the right way to do it, we will have nothing to say, but
22 I don't see why they wouldn't want to consult with us when
23 we know the asset, as I said, better than anybody. So I'll
24 leave it with that. We don't mean to be difficult here. We
25 just want to understand what's going on. And again, if

1 they're doing the right thing, we'll say nothing. But if we
2 have a different view, we don't know why they couldn't take
3 our view into consideration. They don't have to follow us,
4 but we would ask that they take it into consideration.

5 THE COURT: All right, I think I understand. I do
6 see the hand up of the ad hoc group, and hopefully, the
7 technical issues are resolved.

8 So with that, Mr. Rosen?

9 MR. ROSEN: Thank you very much, Your Honor. I
10 apologize for the inconvenience before. And Mr.
11 Frelinghuysen was correct. We do support this motion very
12 much. We believe in the process that is already being
13 undertaken by the Debtors and their advisors, and we have
14 been working with them to try and do exactly what is said in
15 the motion, which is to maximize the value of the assets for
16 all parties.

17 The only thing I will take up with what Mr.
18 Saferstein said was the timing of this, which as Mr. O'Neal
19 already laid out, the timing of this was specific to the
20 conversion to the ETF process and trying to move as quickly
21 thereafter as possible. There was no delay on the part of
22 the estate. There was an inability to do things previously,
23 so we support the Debtors in their efforts right now, and we
24 believe that the Court should grant the motion as revised,
25 pursuant to the order. Thank you, Your Honor.

1 THE COURT: All right, thank you.

2 So I'll turn back to Mr. O'Neal for any response
3 to the comments of DCG's counsel.

4 MR. ONEAL: Certainly. Your Honor, I have so much
5 to say, but I think I'll keep it limited, because I don't
6 think I need to say it. But let me just say that Mr. Rosen
7 is absolutely correct. The timing was driven by the ETF
8 conversion happening on January 10th. We filed a motion on
9 February 2nd, which is pretty good.

10 Secondly, we -- whatever we do, we're going to
11 need to convert the GBTC shares to BTC or dollars. We need
12 to do that for distribution. We don't have any GBTC
13 lenders. Nobody ever lent us GBTC. They lent us Bitcoin or
14 ETH or they lent us dollars. They didn't lend us GBTC, so
15 we need to do the conversion. We don't have enough dollars.
16 We don't have enough BTC without this conversion in order to
17 make distributions.

18 Second -- I guess, third, I just want to address
19 this tax point. I don't think I need to, because I've heard
20 Your Honor. It's kind of like the invisible offshoot, the
21 translucent weed hidden in the bushes. There was nothing,
22 nothing about taxes in any of their pleadings. I just did a
23 control F on their pleading, and the only time the word
24 "tax" is mentioned is when they mention our tax ID in
25 Footnote 1. There was nothing about taxes. And taxes is

1 what it is. We're not going to use this order to change the
2 Internal Revenue Code. And so everybody's rights on the tax
3 issues will be reserved as if the order was never entered or
4 entered. It's just beside the point and not an issue for
5 today.

6 And I'll say for the record, this was not
7 discussed last night when I spoke with Mr. Saferstein. So
8 it's kind of a new issue that developed live at the hearing,
9 but it sounds like I don't really need to address it.

10 And then finally, with respect to consultation
11 rights, there's a conflict. It's an inherent conflict.
12 It's not just the \$1.1 billion note. I'm sure Your Honor
13 has noticed that we filed a complaint to collect \$33 million
14 in connection with the Three Arrows Capital situation. We
15 filed an arbitration demand to recover more than \$27 million
16 in late fees, and there are other amounts that are owed to
17 the estate. It's not just the \$1.1 billion, though that's
18 an awful lot that they owe us. It puts them in an
19 inherently conflicted position, particularly when you then
20 add to it the dividends that they get from the management
21 fees.

22 And then finally, I should just say that we're in
23 litigation with DCG right now. DCG has a pleading that they
24 are accusing the Debtors and the special committee of
25 breaching their fiduciary duties, simply because we're

1 trying to maximize Creditor value. To us, this kind of
2 information request and consultation rights could really be
3 just a litigation tactic, a way to collect more information.
4 And we just think it's inappropriate because of the conflict
5 and the conflict alone, but there's a lot of other reasons,
6 in addition to the conflict and the fact that there's
7 already so much, so much consultation.

8 And if you look at the order, again, Page 7,
9 maximization of sale proceeds, you are ordered, both the
10 Debtors and Gemini, to use reasonable best efforts to
11 maximize the market price of the trust assets or the initial
12 GBTC shares. That's part of the order. We have that
13 obligation anyway, but we were happy to put it in the order,
14 because we have that obligation, and that's what we stand
15 by. Thank you.

16 THE COURT: All right, thank you very much. With
17 that, anyone else who has not been heard who wishes to be --

18 MR. KAMINETZKY: Your Honor -- Your Honor,
19 Benjamin Kaminetzky of Davis Polk. If I could have 30
20 seconds. As Your Honor knows, we represent Grayscale, and I
21 just want to supplement what Mr. O'Neal said about the
22 resolution of our objection.

23 The motion with respect to Grayscale focused on
24 our consent rights, and what we made clear is that
25 Grayscale's consent rights are there to ensure compliance

1 with a complex set of securities laws that could subject
2 Grayscale to liability if they're not followed to a tee. So
3 the revised order that was submitted yesterday, Your Honor,
4 makes clear that our consent will not be withheld if we're
5 satisfied that transaction has complied with the securities
6 laws. I just wanted to explain why it is or how it is that
7 we resolved our objection. Unless Your Honor has any
8 questions, I just thought I should make Your Honor aware of
9 the basis of the resolution before you ruled.

10 THE COURT: All right, no, thank you very much.
11 It's entirely appropriate and sensible to put that on the
12 record, and I did see the consent, "which shall not be
13 unreasonably withheld" language, which seems like an
14 eminently sensible way to address the situation you're in,
15 where requirements with how things are done for purposes of
16 securities law are very important and have potential
17 consequences for liability, at the same time, allowing this
18 -- these transactions to come forward as needed to sell the
19 assets. So thank you for your comments, and I appreciate
20 the obvious work that went into resolving the objection.

21 All right, anyone else?

22 All right, so before the Court is the Debtor's
23 motion seeking entry of an order authorizing but not
24 directing the sale of trust assets and granting related
25 relief. It's at Docket 1227, and the amended agenda lists

1 today there were two objections that were filed, one by
2 Grayscale Investments, LLC, and one by Digital Currency
3 Group, Inc. and DCG International Investments, Ltd. The
4 Grayscale Investments objection has been resolved, as
5 reflected in their revised proposed order that was filed on
6 the docket at Docket 1307, and that was just discussed on
7 the record. Digital Currency Group continues with its
8 objection, which was discussed here today.

9 So the standard here is Section 363 of the
10 Bankruptcy Code, and Section (b)(1) of that statute provides
11 that the trustee after notice and hearing may use, sell, or
12 lease, other than the ordinary course of business, property
13 of the estate. And the standard applied to determine
14 whether such a sale should be authorized is the business
15 judgment standard, something that is much discussed here in
16 bankruptcy court. See *In re Lionel Corporation* 722 F.2d
17 1063 and 1070, Second Circuit (1983).

18 To satisfy the business judgment standard, it's
19 only a modest showing, as the case law makes clear. The
20 Debtor need only articulate a reasonable basis for its
21 decision, and that's to distinguish that kind of decision
22 making from a decision made arbitrarily or capriciously.
23 See *John -- In re John-Manville* 60 B.R. 612 and 616 (Bankr.
24 S.D.N.Y. 1986). And the age of the cases tell you how well
25 established the principles are that we're applying here

1 today.

2 And once the Debtor articulates a valid business
3 justification, the business judgment rule presumes that in
4 making a business decision, the Debtor acted on an informed
5 basis in good faith and honest belief that the action was in
6 the best interest of the Debtor, and there are more cases
7 than one could shake a stick at for that proposition. So
8 but one of them is In re Integrated Res. Inc. 147 B.R. 650
9 and 656 (S.D.N.Y. 1992).

10 So in this circumstance, the Court finds that the
11 sale or redemption of the trust assets is in the sound
12 exercise of the business judgment for all the reasons that
13 are set forth in the motion in the declarations and
14 highlighted here this morning. The utility of the Debtor's
15 holding, the trust shares, will be maximized if the Debtors
16 have the flexibility to transfer or redeem the shares at an
17 appropriate time. That -- with that flexibility, the
18 Debtors are hoping to maximize the value of the trust assets
19 and position the sales to facilitate distributions to their
20 Creditors.

21 And I would just note here that there's much
22 discussion of the timing in terms of maximizing value. I've
23 seen nothing on the record here that suggests the timing
24 proposed by the Debtors here does not do that. It gives
25 them the flexibility. It's in, actually, the title of the

1 motion. It is the authority but not direction to sell the
2 trust assets, and it's very clear from the motion that it's
3 going to be done at the appropriate time to maximize the
4 value. And so Debtors in fact explained that they believe
5 obtaining authority to redeem or sell the shares is
6 necessary now so that they can, given the impact on the
7 market price from selling large quantities of trust shares
8 at the same time, gives an ability to do it as is
9 appropriate and provides the Debtors with the ability to use
10 their discretion in terms of the timing for such sales or
11 redemptions.

12 And I also find that the request to use cash on
13 hand to purchase BTC or ETH is appropriate. It's explained
14 and no one's challenged that selling routinely with trust
15 assets is a multi-step process that may entail delay between
16 the decision to sell and redeem on the time that proceeds
17 are obtained. And thus, it's in the sound exercise of
18 business judgment to use cash on hand to purchase BTC/ETH
19 rather than having to wait until the Debtors receive cash
20 proceeds.

21 The Court notes that the Debtors submit and
22 explain, I think, in the motion and make it even more clear
23 in the revised order that the retention of one or more of
24 the brokers in connection with the sale is appropriate and
25 how they intend to proceed so as to assist in the time of

1 the sales, appropriate venues for selling and sale
2 counterparties, as well as to ensure compliance with all
3 applicable law.

4 In a similar vein, I'm happy to approve the
5 requested authority for Gemini to begin conducting sales or
6 redemptions of the initial GBTC shares in anticipation of
7 its role as Gemini's distribution agent, as defined in the
8 plan. As explained, this is a prudent step, which allows
9 the Creditors to realize the benefits of selling such shares
10 immediately without a need for delay on awaiting
11 determination of pending disputes between the parties that
12 might otherwise delay things.

13 So a couple of notes, again, one objection has
14 been resolved to everyone's satisfaction, and I'm including
15 my own satisfaction, looking at the revised order, which
16 makes eminent sense. As to DCG's objection, I am going to
17 overrule it for a variety of reasons. One is the broker
18 issue, I think, has clearly been addressed, if not in the
19 initial motion. One can argue it was addressed there, but
20 it's crystal clear in the current state of the record.

21 I think the tax issue is a red herring. There's
22 nothing in the motion that purports to address taxes. And
23 if taxes are incurred that are irrevocable for -- from any
24 gains, then that's what they are. That's how the tax code
25 works. It's all part and parcel of maximizing the value and

1 the timing and the way that these assets may be sold. And
2 again, I have no reason to question the Debtor's proposed
3 method of going forward. So nothing here affects the tax
4 issues or affects anybody's rights in the tax issues. And
5 the less said about the taxes, the better. In fact, taxes
6 are not raised by anybody in any pleading in connection with
7 this motion. So that takes care of taxes.

8 As for timing, I think I've already made clear
9 that I don't believe that there's any concern about timing.
10 And this sort of bleeds into the issue of consultation
11 rights to some extent. There are quite a few cooks in the
12 kitchen. That includes the UCC, the ad hoc group, and
13 (indiscernible). And these are folks who are not -- have
14 not always been on the same page in this case, because they
15 have parted company on various issues at various times,
16 represent -- best represent the interest of the folks or
17 their clients. And today, they all stand together in
18 support of this motion, saying it is appropriate, noting
19 that the timing is driven by the conversion, and that the
20 flexibility is needed now to be able to conduct these sales
21 appropriately.

22 So I haven't seen anything that, in the papers,
23 that suggests that there's a need for DCG to be involved as
24 a party with consultation rights. That said, of course, I
25 would trust that the Debtors, in exercising their fiduciary

1 duties, if they thought it was appropriate to reach out for
2 another view, they would, but again, this is an asset sale.
3 They're trying to monetize the assets, and I think there
4 certainly is considerable expertise on behalf of the
5 Debtors, the committee, the ad hoc groups, and Gemini in
6 order to do that.

7 And last but not least, in any event, DCG is in,
8 at best, an awkward position for asking for consultation
9 rights here. There is an inherent conflict. They are
10 getting -- they have a monetary interest in the continuation
11 of the existing relationship. That's undisputed. It's,
12 frankly, a bit surprising that it's not at least addressed
13 in the objection. That's kind of playing with fire,
14 frankly, but there's a whole host of disputes and
15 litigation, and there's a pending confirmation objection,
16 and it makes clear that DCG has an interest in pursuing its
17 own agenda, its own interest, as it is allowed to do under
18 the Bankruptcy Code. No one begrudges its ability to look
19 out for itself. That's kind of how this has gone, and
20 that's the way it is.

21 So but at the same time, those different
22 interests, which I'm not going to go through, I think they
23 were addressed on the record by Mr. O'Neal in some depth,
24 make it clear that DCG is not in an ideal position to offer
25 dispassionate and -- advice untainted by its own interest.

1 It's just not, so I'm not sure that it needs to be a
2 consultation party in any right but the fact that it has --
3 those circumstances in this case mean that it really
4 shouldn't be a consultation party. And so I'm going to
5 reject that request.

6 So I understand that the issues about the
7 mechanics have, while I said, been addressed with the
8 Grayscale objection, so really, we're talking about timing
9 and consultation rights at the end of the day. I find the
10 time to be appropriate, and I find the consultation rights
11 not to be. So that's my ruling on the pending motion.

12 I will say that, since we're talking about the
13 Debtors and DCG, sometimes conflict presents opportunity.
14 It certainly has struck me in various things that I've read
15 over the last few months, including things more recently,
16 that a lot of the disputes really are in some ways, at least
17 some of the aspects of it, are flip sides of the same coin.
18 That is, when you start talking about what recovery the
19 creditors get, you start talking about what impact that has
20 on litigation among other parties who were suing for
21 damages. That is, if the Creditors are fully made whole and
22 what that looked like.

23 There's obviously the New York AG's complaint,
24 which is focused on that, which the Debtors have settled,
25 but I understand other parties have not, but there's also

1 litigation. And that means there's a lot of moving pieces,
2 but a lot of those moving pieces affect more than one set of
3 disputes or conflicts. And that presents opportunities for
4 parties to try to have meaningful discussions.

5 And so given the quality of the professionals
6 here, I trust that those discussions are happening or should
7 happen. If there's anything that I can do to assist, please
8 let me know. But the alternative is obviously to spend a
9 considerable amount of time and effort in the ongoing
10 litigation, which again, my experience dealing with large
11 cases, I think, is much like yours, meaning that the parties
12 often say, Judge, we need a couple of rulings, and once we
13 get a couple of rulings, we'll be able to better handicap
14 what an appropriate result looks like here. So I trust
15 that's happening in this case.

16 Again, there's a lot of things that happen in the
17 room with settlement discussions or the like. I'm not in
18 the room where it happens, so I'm acutely aware of that, so
19 my comments could be very much out of sync with what's
20 actually going on, but I feel duty bound to give the
21 obligation to the extent that there's any resistance at any
22 level where you can hopefully use me as the -- as to blame
23 for the need for continued discussions. But if I can be of
24 any assistance, let me know, but that certainly struck me in
25 the context of discussing DCG's issues today and what the

1 path looks like going forward. But you have my ruling, and
2 with that, Mr. O'Neal, is there anything else we should
3 discuss here today from the Debtor?

4 MR. ONEAL: Your Honor, the Debtor has nothing
5 further. We thank you for your time. There may be -- it
6 looks like Mr. Medina may have something to say as to which
7 that mean that Mr. Weaver will have something to say.

8 THE COURT: All right. Before I get to Mr.
9 Medina, let me ask the committee if they have anything that
10 they wanted to address.

11 MR. SHORE: Nothing, Your Honor.

12 THE COURT: All right, anything from anybody else
13 before I hear from Mr. Medina?

14 MR. ROSEN: Nothing, Your Honor.

15 MR. SAFERSTEIN: Nothing, Your Honor, thank you.

16 THE COURT: All right, hearing nothing else from
17 any other party, I'll turn to Mr. Medina.

18 Mr. Medina?

19 MR. MEDINA: Thank you, Your Honor. Your Honor,
20 just in the spirit of what Your Honor raised with respect to
21 timing and moving this matter along as quickly as possible
22 with confirmation being on the 26th, I wanted to raise to
23 Your Honor an issue I'm having with regards to just
24 receiving some exhibits that the parties intend to rely on
25 at the confirmation hearing.

1 THE COURT: Yeah, I saw your -- I guess you had an
2 email or a letter to chambers on that. I could not tell
3 whether the Court was being asked to intervene after the
4 parties had exhausted all conversations or whether people
5 were communicating through me. Obviously, one is
6 appropriate, but the second is not, and I certainly want to
7 encourage parties to talk to one another. And we are also -
8 - the 26th is sufficient time away that I would think
9 parties can address those issues, so that's why I did not
10 jump on that issue before now.

11 MR. MEDINA: No, understood, Your Honor, of
12 course. And I think it was the former, not the latter. I
13 think an order was submitted. There was an objection.
14 There just wasn't an opportunity to clarify what the issue
15 was. But Your Honor, to just summarize very quickly, under
16 an email that I got yesterday, Exhibits -- it looks like the
17 parties can submit exhibits to one another up until February
18 20th, the day after, that Presidents Day. And under Your
19 Honor's order, in limine motions are due the next day, 24
20 hours later. My concern is, Your Honor, just for simple
21 procedural fairness, there is -- it looks to be about 170
22 exhibits that could potentially be offered by any one of
23 three parties.

24 THE COURT: But what -- all right, what is your
25 issue that is in your head about a motion in limine? What

1 is it that you were concerned about being introduced into
2 evidence at the confirmation in terms of a type of evidence
3 or a type of issue or -- so I will say I had a different
4 view of what motions in limine was in practice than I do on
5 the bench.

6 In bench trials, judges, I will confess, are not
7 necessarily huge fans of motions in limine. We just argue
8 about the significance of the exhibits and their relevance,
9 because you're not worried about a jury being tainted. They
10 pay me to be able to separate out the legal issues. So what
11 is it -- is there something currently on your radar screen,
12 an issue or a document or something that is motivating this
13 concern about motions in limine?

14 MR. MEDINA: Sure, Your Honor. The answer is no.
15 It's purely deadline-driven, Your Honor. We don't know what
16 we don't know. I haven't seen any of the documents. They
17 just simply have never been provided, so --

18 THE COURT: Well, but aren't parties exchanging
19 them on the -- all right, so let me hear from the Debtors
20 and see where they are, and then we can -- I frankly really
21 don't want to spend a lot of time on motions in limine
22 today, but --

23 MR. MEDINA: Yeah, I get it.

24 THE COURT: -- let me hear from Debtors.

25 MR. WEAVER: Thank you, Your Honor. Andrew

1 Weaver, Cleary Gottlieb Steen and Hamilton on behalf of the
2 Debtors. Your Honor, I think the issue here that we've been
3 trying to manage is the parties obviously are exchanging
4 potential exhibits that will be used at the confirmation
5 hearing. And obviously, there are different objections by
6 different parties that relate to different documents, and so
7 it's a little bit complicated to a certain extent, because
8 it's not the same parties, the same objections, et cetera.

9 So what we've tried to do, and I'm sorry to have
10 to get into this level of detail with you, Your honor, but
11 we've tried to facilitate the exchange of exhibits that are
12 not objected to so that we can have those prepared and
13 delivered to you ahead of time, as you had requested.

14 During the course of that process, there were
15 documents identified by the committee related to the DCG
16 objection, that the DCG parties objected to, and that the
17 DCG parties encountered designated documents that are
18 objected to. And those parties are working out as to that
19 objection, as to those documents, what they're going to do.
20 And so we've not circulated those documents to all of the
21 potential objectors, because that issue is still being
22 worked through, and that issue may or may not be resolved.

23 To the extent it's not resolved and a party wishes
24 to use those documents at confirmation, we will provide them
25 to all of the objecting parties so folks do have a chance to

1 see them before the hearing. But the issue that, I think,
2 Mr. Medina was raising is just the fact that there is a
3 dispute among parties that don't relate to his objection,
4 documents that don't relate to his objection, that are being
5 worked out. And until it's worked out, we're not
6 anticipating circulating every potential document amongst
7 the parties. That was not -- and these documents in
8 particular were not produced as a part of confirmation
9 discovery.

10 So as the parties work through those issues, Your
11 Honor, we have sufficient time to come to a resolution on
12 that. And to the extent that those document will be used at
13 the hearing, the parties will have an opportunity to see
14 them ahead of time. And as you noted, I don't expect
15 there'll be motions in limine as to exhibits. There may be
16 discussions during the hearing about exhibits. We talked
17 about that previously. But this isn't an issue about not
18 sharing information relevant to Mr. Medina and his
19 objections that he's filed and the discovery that he's
20 received and the documents that he's notified and the
21 documents the Debtors have identified related to his
22 objection.

23 So it's a little premature. I think the parties
24 are trying to work through some of these issues, and we're
25 obviously looking to facilitate the smoothest process on

1 these issues as possible before confirmation.

2 THE COURT: All right, so today is the 14th.

3 Nothing says Valentine's Day more than discussions about
4 motions in limine. So listen, it's a bench trial. I am not
5 going to cut any -- off anybody's rights to be heard and
6 objecting to exhibits. Right? And motions in limine work
7 best, frankly, when they are identified to a particular
8 issue. Right? Where someone says, I know somebody wants to
9 go down this rabbit hole, but it's a waste of time. It will
10 cut the trial in half or significantly and it will -- it'll
11 prejudice the jury or the judge or whatever it is in terms
12 of how to look at the case.

13 And that's why I asked that question, Mr. Medina.
14 I'm not asking you to pull a rabbit out of your hat.
15 Sometimes, there are some cases where people say, I know
16 that this party wants to go here, and I have a problem with
17 that, and I want to let the Court know early. So but
18 barring that circumstance, everybody will have a chance at
19 the hearing to object to any exhibits, and we'll get through
20 it.

21 The other reason why judges favor that is because
22 then I have a context for the objection, so you know, that's
23 the way it works. I understand people want to see exhibits
24 ahead of time. I don't see exhibits ahead of time, because
25 they're not evidence until they're admitted, and so until

1 people tell me what they want to rely upon in the exhibit,
2 so I try to stay away from it, frankly. And it's the last
3 thing I want if people show up with their binders the day of
4 the trial. It's fine with me, because it's -- none of it's
5 in until we get through it.

6 So given that today's the 14th, and we're getting
7 together for confirmation on the 26th, I'm going to impose
8 on you all to cooperate and communicate good faith, and if
9 there's some specific issue that comes up, again, to do what
10 you always do in discovery under the local rules, which is
11 meet, confer, and see where you end up. But it is, we're
12 all at our worst when we're talking about theoretical issue
13 rather than actual issues. And so, Mr. Medina, I promise
14 you will get a chance to be heard on evidence that you
15 object to.

16 MR. MEDINA: I appreciate that, Your Honor. I
17 just -- one point, and I understand Your Honor's procedures,
18 and I think they make good sense, particularly with regards
19 to the way Your Honor handles trials. I think really just
20 to respond very shortly to what was -- what's said, this is
21 really about knowing what we know. Without knowing the
22 documents, it's basically trial by fire, Your Honor. There
23 is no information. There's no predicate, so it's not
24 necessarily about any desire to file any kind of in limine
25 motions. It's literally a desire to just be prepared for

1 trial, Your Honor.

2 THE COURT: Right, but I would think that the
3 confirmation discovery that occurred in response to your
4 requests is -- the reason why that happens is to address
5 that kind of concern, right? What is it you want to know?
6 What is it you want to get? And that you have that. So if
7 there's something that was produced to you that you clearly
8 have a problem with, then you know that now and can handle
9 that appropriately. And again, beyond that, we'll get to
10 it, and I appreciate all the effort that the parties will
11 make on that.

12 Another reason why I try to stay out of this at
13 this point is, and again, I'm sorry, I don't mean to be
14 pedantic about all this stuff, but judges, when asked to
15 weigh in on certain things prematurely, we get -- that's --
16 we get closer and closer to throwing darts at a dartboard as
17 opposed to making intelligent and subtle decisions, and so
18 that's why talking about evidence too early out of context,
19 you're not going to get a whole lot of high-quality wisdom
20 from me, despite my best efforts, just because I'm not
21 nearly as versed in the ins and outs.

22 So I'm going to let the process play out, given
23 that we're the -- we're on the 14th and we're talking about
24 the 26th, so there's more than a week and a half to get
25 there. And I trust you all will, again, communicate and

1 cooperate in good faith. All right.

2 MR. MEDINA: Thank you, Your Honor.

3 THE COURT: With that, anything else form any
4 other party?

5 MR. WEAVER: Nothing from the Debtors, Your Honor.

6 THE COURT: All right, thank you all very much.
7 Have a good afternoon, and I will see you all soon.

8 (Whereupon these proceedings were concluded at
9 12:15 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: February 16, 2024